DEVELOPMENT (194) Department.

MS SERIES.

G.O. No. 2863

Dated 26th July 1946.

[Despatch Abstract.]

R E N T - Madras Non-Residential Building Rent Control Order - Eviction of tenant - Order of the Collector of South Kanara - Revision petition - Orders passed.

Appellants

VAKALAT

In the Court of the Secretary to the Development department to Government of Madras.

No. ..... of 1946.

Maire Hengsu ..... ~~Plaintiff~~ / *Appellant* / *Petitioner*

Vs.

Parameswara Shetty. ..... *Defendant* / *Respondent*

I, Maire Hengsu daughter Akkamma, residing in Hampankatta of Mangalore town, as the appellant.

do hereby appoint and retain Sw. P. Shivothar Rao Advocate

to appear for me in the above Suit/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I empower my ~~Vakil~~/Advocate to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents and draw any moneys that might be payable to me in the said suit or matter.

In witness whereof I have hereunto set my hand this 5th day of May 1946.

accepted

Date 7. 5. 1946

Shivotharaorao

..... *~~Vakil~~/Advocate*

Ma

The address for service of the said Vakil/Advocate is

C/o Dr. K. L. Narayanarao
389 Mint St
Sowcarpet
Madras
~~Mangalore~~

III Three marks of L. H. of Maire Hengsu.

Signed before me by the Executant this 5th day of May 1946 the content this vakalat having been read over to the executant in Tulu and admitted by him/her/them to be corr

V. Ramappa
Village Munsif Kodial
Mangalore

In the Court of the Secretary to Govt
Development department to the
Govt of Madras.

No. ..... /1946

Appellant's VAKALAT

produced on behalf of Appellt on 194

K.S.

Vakil/Advocate

Codialbail Press—P. I. C. 20—30. 8. '46—1000.

FIRST ASST. SECRETARY TO GOVERNMENT
6 - MAY 1946
DEVELOPMENT DEPARTMENT

Before the Secretary to the Development Department to the Government of Madras, M a d r a s.

Appeal No. /1946.

Maire Hengsu daughter of Akkamma residing in Hebupankatta, mangalore town in S. Kanara District. Appellant

Versus

Paramesra Shetty, Nephew of Thalapadi Thoma Rai, merchant residing in Hoeupankatta, Mangalore town in the District of S. Kanara. Respondent

Appeal under Section 9(2A) of the Madras Non-residential Buildings Rent Control Order

P 44(U)

The appellant above-named being aggrieved by the order of the District Collector of South Kanara dated 11- 3- 1946 D.Dis. 2508/46, begs to prefer this memorandum on the following among other grounds:-

1. The decision of the Collector is incorrect and liable to be set aside.

2. The Collector ought to have held that the petition for eviction was based on four grounds, viz. (1) that respondent was in arrears of rent to the extent of Rs. 700/-, (2) that he is unwilling to pay fair rent of Rs. per month, (3) that he has taken the premises for trade in beaten rice and has no right to divert it for other purposes, (4) that he has sub-let a shop and that as an order for eviction was granted on a finding on the 4th ground, the order of the Controller was not appealable at the instance of pettitioner as it is only a person against whom an adverse order is passed that can appeal under Section 9(2) of the Control Order. Hence he ought to have given a decision on allthe four points raised and the order reversing the order of eviction only on a finding on the question of sub-letting is erroneous and is liable to be set aside.

3. The Collector ought to have held that the finding of the Controller on the question of arrears of rental is erroneous because -

(a) The Civil Court has definitely found in Exhibit P1- that the payment of Rs. 810/- is not binding on petitioner and even if true covers the rental only upto 81-8-1943.

(b) That petitioner has admitted both in Exhibit P2 and the Court that he has not paid any rental after the payment of Rs. 810/-.

(c) The non-payment of rental being admitted a decree for eviction ought to have been passed. His further plea regarding accounts between him and petitioner's brothers is foreign to the scope of the enquiry before the Controller.

(d) Controller has no right to entertain doubts or to give the benefit of the same to respondent as in a criminal case. The benefit if at all should be to the land-lord.

4. The Collector ought to have held that respondent is in arrears of Rs. 1,700/- and o ught to have upheld the order of eviction on that ground.

5. The Collector ought to have held that the fair rent is Rs. 24/- per month and the refusal of the Controller to fix fair rent is incorrect because -

(a) Section 5 applies only to cases of complaint that rental is excessive which could be only by the tenant as no land-lord will complain that the rental paid by tenant is excessive.

(b) The only provision applicable in cases where tenant refuses to pay fair rent and land-lord prays for fixing the same is under Section 8.

6. The Collector ought to have held that the respondent being unwilling to pay fair rent is liable to be evicted and upheld the order of eviction on that ground.

7. The Collector ought to have held that Controller failed to advert to point 3 viz. that admittedly respondent has been let into possession for the purpose of preparing and selling beaten rice and is diverting the shops for other purposes and hence is liable to be evicted.

8. He ought to have upheld petitioner's contention and upheld the order of eviction on that ground.

9. The Collector's interpretation of Section 8(2)iii(a) is erroneous.

10. He ought to have held that as admittedly one of the shops is used for a purpose other than the preparation and sale of beaten rice and the other is sub-let, the respondent has contravened provisions of Section 8(2)iii(a) and ought to have upheld the order of eviction.

11. In any view as the two shops have been separately let at separate times, one of the shops has admittedly been sub-let, the respondent ought to have been ordered to deliver the shop so sub-let.

Hence, petitioner prays that the order of the District Collector may be set aside and the respondent be ordered to be evicted from the suit premises or in the alternative a re-trial may be ordered on the question of the respondent's liability to be evicted on the ground -

(1) that he is in arrears of rent to the extent of Rs. 1,700/-.

(2) that he refuses to pay fair rent at Rs. 24/- per month

(3) that he is using the premises for a purpose other than for which it was originally let out.

Mangalore,
5- 1946

K. Subbaraya Rao.
Counsel for Appellant.

This is an application filed under section 8 (2) (i) (ii) and (iii) of the Madras Buildings (Lease and Rent Control) Order 1942 read with section 4 of the Madras Public Demands Recovery Act, 1864. It is alleged that the respondent took on lease from the petitioner, the shop buildings described in the schedule to this order on monthly rental of Rs. 12/- for each, from January 1939 for his trade in betel-leaves, that since 1-2-40 he did not pay any rent, that the respondent filed a suit in the M.C. Mangalore in which he stated that he paid a rent of Rs. 810/- to the then rajamathi Kaveriamma on 14-2-40, and that the Civil Court dismissed the suit with costs, and according to the petitioner's calculation the rent due from the respondent was Rs. 1715-0-0, after making deductions for admitted credits. It was further alleged that the respondent is not only willing to pay the rent due but that he had not received the two shops buildings (that covered by T.S.No. 20-1/2) in question and although made without his consent, and that as the tenant also he is liable to be evicted.

The respondent filed a counter contesting the application.

The petitioner's brother was examined on behalf of petitioner. He deposed to the facts in the application and stated that his elder sister is the eldest of the family, that one of the premises in question was leased out to the respondent 20 years ago and another 6 years ago, and that he was carrying on trade in betel-leaves in those premises, and that the rent for each shop was Rs. 12/- due on the first of every month. He also filed an Ex.P-1 certified copy of the judgment in the suit filed by the respondent. During cross-examination he was made to file as Ex.R-1, the registration copy of an agreement entered into between the petitioner, the rajamathi of the family, the respondent and some others in 1939 in regard to these shops.

The respondent examined himself as R.W.-1. He deposed that he had been tenant of the petitioner for about 10 years and that the rent due for both the shops was only Rs. 15/- per mensem, according to Ex.R-1. Though there it was dismissed, he was filing an appeal and that his contention in the suit was that all the arrears of rent due up to the end of October 1940 had been discharged and that he never agreed to pay a rent of Rs. 24 at any time. During the cross-examination of this witness, certain portions in his deposition in the suit filed by him vide Ex. E-2 were marked as Ex.R-2-(a), (b) and C, to contradict some of the statements made by him in this court.

In this case it is admitted that the respondent is a tenant of the petitioner. There is, however, a dispute in regard to the exact quantum of rent due. According to the petitioner it is Rs. 24 per mensem, whereas according to the respondent it is only Rs. 15/ per mensem for both the shops. There are no documents filed in this case which throw light on the question, as to what was the agreed rate of rent between the parties, except Ex.R-1. It is a document to which the petitioner, the rajamathi Kaveri, and also the respondent are parties and the rate of rent is mentioned it is at Rs. 15 per mensem. The petitioner has offered a very elaborate explanation as to why this document should not be relied upon. I am not prepared to accept his explanation, in view of the fact that this is a document which gives the rate of rent at a time when it was not the subject-matter of any dispute between the parties. I must also mention

under Section 8 of the Control Order, for fixing a fair rent in this case I consider it a fair rent if I am moved under this section by the parties in this case. Since it was not so, I cannot give a finding on this point. For the purpose of this application, I must, however, decide what is the relation between the parties and taking the facts of the case into consideration, I have no hesitation in saying that the agreed rate of rent in this case is Rs. 15/ p.m. and not Rs.

The next point for decision is whether the rent is in arrears. According to the petitioner nothing has been paid arrears since 1939. The respondent has put forth several contentions according to him all the rent due till the end of October 1945 had been paid by him and nothing was in arrears. The facts of this case are such that it is not quite an easy matter for a summary court like this to find out whether and if so what rent is in arrears, because various other transactions are intended with this bona fide question and it is for a Civil court to resolve this tangle and give a finding as to whether any rent is in arrears, if so, what exactly is the amount. In view of this, I am prepared to give the benefit of doubt to the respondent, and hold that if it has not been established that he is in arrears of rent. The application therefore fails on the point.

As regards the allegation regarding the sub-tenancy, the respondent admits it, but he said, pleads that it is a sub-tenancy of long duration. Whatever it is, he has no business to sub-let the premises without the written consent of the landlord. The respondent admitted clearly that he had not obtained the written consent of the landlord. His action in sub-letting the room of the shop building to a third party, amounts to a contravention of section 7-(2)(iii) (a) of the Control order. Under this provision of law, I order that the respondent should hand over possession of the property leased out to him, to the petitioner not later than 15-2-46.

Sd/- illegible,
Revenue Divisional officer, and
House Rent Controller, Mangalore.

/ True Copy/

(By order) Illegible
for Head Clerk. 12.2.46

Schedule A.

Description of the property.

ಮೇಲಿನ ಕಛೇರಿ ಶೈಲಿಯ ಕೆಲವು ಬರಹಗಳು ಅರ್ಥವಾಗದಿರುವ ಕಾರಣ ಸಂಪಾದಕರು ಅವನ್ನು ಬಿಟ್ಟಿದ್ದಾರೆ.

D.Dis.2508/46.

Proceedings of the Collector of S.Kanara dated 11-3-46.

Rao Bahadur Sri P.Ramadoss,B.A.

***

The Madras Non-Residential Building Rent Control Order - H.R.C.O.P. 196/45 on the file of the Revenue Divisional Officer, Mangalore - Appeal - Orders passed.

Read: 1. Appeal petition dated 21-2-46 of Sri Parameshwara Shetty.
2. Mangalore R.D.O's proceedings H.R.C.O.P.196/45 dated 21-1-46 and the connected records.

Heard:- Sri A.Shanker Alva Advocate Mangalore for the appellant and Sri P.Shrednara Rau, Advocate Mangalore for the respondent Heard (*)

In this case the Rent Controller has ordered the appellant to hand over possession of the non-Residential building on the only ground that one of the two shops comprising the building has been sub-let without the written consent of the respondent. Rule 8(2)(iii)(a) of the Madras Non-Residential Building Rent Control Order,1945 contemplates the sub-letting of the entire non-residential building and not merely a portion thereof. In this case the evidence is definite that only one of the two shops has been sub-let. Therefore the order of eviction is not valid. The Rent Controller's order is accordingly set aside.

(Dictated by me)

Sd/ P.Ramadoss.
11-3-46.
Collector.

/my order/

P. Ramadoss 15/3/46
Huzur Head Clerk.

To the Appellant through his vakil Sri.A.Shankar Alva, Advocate, Mangalore.
The Respondent through her vakil Sri P. Shrnedara Rau, Advocate, Mangalore.
The R.D.O.Mangalore with the records of H.R.C.O.P.196/45.

Dev Dept

Issue

Memo No 29753/46-1 dated 14.5.46

Ak 14/5/46

Sub:- Rent - Madras Non-Residential Building Rent Control Order - Eviction of tenant - Order of the Collector of South Kanara - Revision.

pp 3-6 C.F.

Ref:- Petition from Miss Claire Hengsu, dated nil.

A copy of the petition cited above is forwarded to the Collector of South Kanara. The Collector is requested to forward ~~to the Govt.~~ the entire records connected with the case in his office and on that of the Rent Controller - Mangalore.

16.5.46

AK 13/5/46 13.5.46

The Collector of South Kanara

(with a copy of pp 3-6 C.F.)

R.D. 6.6.'46.

To A S

Please see the petition on pp 3-6 C.F.

The petitioner applies to the Rent Controller for the eviction of

her tenant for arrears of rent and for having sub-let the premises. It is seen from the order of the Rent Controller that he has not examined the question of arrears of rent. The Collector has not also made any observation on this point. It is also submitted that the order of the Rent Controller on pp 7-8 c.f. is not legible. The records connected with the case may therefore be called for. A draft memo is submitted overleaf for approval.

para 2 on p 3 c.f.

Vide A on p 8 c.f.

3/5/46

13.5.46.

Dev Dept

Memo No 29753 N/46-2 dated 8.6.46.

Sub: Rent – Madras Non-Residential Building Rent Control Order – Eviction of tenant – Order of the Collector of South Kanara – Revision.

Ref: Memo No 29753 N/46-1 dated 14.5.'46.

The Collector of South Kanara is requested to state when the records called for in the reference cited above may be expected

To The Collector of South Kanara

N R. 25/6/46

Ref:C.No.5103-46-A1.

S.Kanara Collector's Office,
Mangalore, dated 12-6-1946.

From
S.Bhoothalingam, Esq.,OBE.,ICS.
Collector of South Kanara
Mangalore.

To
The Secretary to Government,
Development Department,
M a d r a s.

Sir,

R E N T: The Madras Non-Residential Buildings Rent Control Order - Eviction of tenant - order of the Collector of South Kanara - Revision - Report Submitted.

Ref: Government Memorandum No.29793-N/46-1 dated 14-6-1946.

The order of the Rent Controller (Revenue Divisional Officer, Mangalore) in H.R.C.O.P.196/1945 on the file of his Court, deals in detail, with the contentions raised in the Revision Petition. The contentions in para 2 of the Revision petition have been met by the Rent Controller in paras 5 of the order and he has furnished his reasons for not having given a finding in favour of the petitioner in respect of the points 1 and 2 referred to in the said paragraph. With regard to point 3, the Revision Petitioner merely stated in her petition to the Controller that the Respondent was using the shop for a purpose different from the one for which it was let out. She did not say for what purpose it was put. Nor did her brother in his evidence before the Controller specify it. Though the Revision Petitioner could not file an appeal against the Revenue Divisional Officer's order in respect of these points, she could have urged them before the appellate Court (Collector) at the time of the hearing of the appeal of the Respondent; but she did not do so and hence my predecessor could not give any findings on them.

Paragraph 5 of the Revision Petition: The stipulation in Exhibit R-1 that the agreed rent per annum is Rs.180/- will make it clear that both the shops together were rented at Rs.15/- per mensem and not each of them at Rs.12/- as contended by the revision petitioner.

Paragraph 7 of the Revision Petition: The agreement Exhibit R-1 to which the Revision petitioner's brother Ramappa is a signatory does not show that the shops were let out for purposes of preparing and selling beaten rice as alleged in this paragraph, nor is there any stipulation that they should not be used for any other purpose. No other rent deed was produced by the Revision petitioner.

Paragraph 8: In this office proceedings D.Dis.2508/46, dated 11-3-46, full reasons have been furnished why the order of eviction on point No.4 referred to in paragraph 2 could not be upheld.

The records of H.R.C.O.P.196/45 on the file of the Rev. Divl. Officer, Mangalore and D.Dis.2508/46 of this office, are enclosed for reference and return.

For Collector.

Dev Dept

Issue Urgently

Memo No 2973 3M/46-3 Dated 25-6-46

Sub: Rent - Madras Non. Residential Building Rent Control Order - Eviction of tenant - Order of the Collector of South Kanara - Revision.

Ref Petition from Mare-Hegsu dated nil.

A copy of the petition cited above is forwarded to the respondent, Sri Parameshwara Shetty. He is informed that he should submit in writing any representation he may wish to make so as to reach the Govt. on or before the 16th July 1946

Sd/- Illegible
for Secretary to Government

To Sri Parameshwara Shetty
Hampankatta
Mangalore.
(With a copy of pp 3.6C.F)
By regd Post.

AK
24/6/46

Sd/-
25/6/46

pp 3.6C.F

Sd/-
25/6/46

1 JUL 1946
47924
13 JUL 1946

To

The Secretary
To the Development Department,
Government of Madras,
Madras.

Humble Representation submitted By Parameshwara Shetty, nephew of Thalapadi Thoma Rai, Merchant, residing at Hampankatta, Mangalore Town, in obedience to the notice issued by the above office in Memorandum No.29753 N/46-3 dated 25th June 1946.

1. The appeal filed by Maire Hengsu against the order of the Collector of South Kanara in D.Dis.2508/46 dated 11-3-1946 is not sustainable.

2. The first ground urged viz., that the Respondent was in arrears of rent, is not sustainable in view of the fact that the entire matter is under litigation between the parties in A.S.No.514/45 in the District Court of South Kanara and in O.S.No.350/1945 on the file of the District Munsif of Mangalore. The rent till 31-10-1945 had been discharged and the Controller has correctly appreciated the evidence and law on the point and come to the conclusion that it has not been established that he is in arrears of rent.

3. That the appellant has not chosen to challenge this finding and the Collector has correctly adverted to the only point that was in issue viz., whether the sub-letting of a portion has worked forfeiture and thus rendered the tenant liable to be evicted. The Collector has rightly held that this will not render a tenant being evicted.

4. That the second ground taken in appeal also is not sustainable. Ex.R1 the registered agreement has clearly mentioned the rent as Rs15/- i.e., Rs180/-

per year. In the face of this document and without any other evidence worth the name, it is submitted that the correct rent is only ₨15/- a month. The Controller's reasoning for adopting ₨15/- per month as rent, is accurate and is not liable to be set aside. The Appellant who is in possession of the Municipal receipts has not chosen to produce the same which would have clearly established what the annual rental is in respect of the demised properties.

5. That the third ground taken by the appellant that the respondent has made use of the premises for other purposes for which it has been let, is equally untenable. The shops have been taken for the purposes of trade. When beaten rice could be made, it was being used for that purpose and now that there is a ban from Government from manufacturing beaten rice, the shop is used for ordinary trade. The element of trade is still there. This point also has been carefully considered by the Controller.

6. That the last ground urged viz., that a portion of the demised properties were sub-let, the Controller fell into an error in reading Section 8(2) (iii) and failed to notice that eviction could be ordered if the entire non-residential building is sub-let. This error has been set right by the Collector on appeal by the Collector.

7. It is submitted that both the Controller and the Collector have come to the same conclusion and hav carefully considered the evidence and there is neither a question of law nor fact involved here. In these days when tenants have actually no place to go to in case of eviction, the proper course is to construe the orders as

liberally as possible in favour of the tenants.

8. That the rent has been fully discharged till 31-10-1945 and in this case advance payments also have been made. The rent for the month of November was sent by money order and this was improperly refused. The Respondent has not committed any default and for which the above appeal is liable to be dismissed.

The statement in para 3 (c) of the appeal memo is not correct. The Respondent has nowhere admitted that any arrears of rent, are due. The further allegation that a sum of Rs1700/- are due is also not correct. To this allegation made in the suit O.S.No.350/1945 aforesaid, respondent has taken proper defences in his written statement and the suit is pending trial before the District Munsif of Mangalore.

10. There is no provision in the order for a landlord to come forward and say that the fair rent has to be fixed. It is only a remedy open to the tenant to request a fair rent to be fixed when excessive rent is charged.

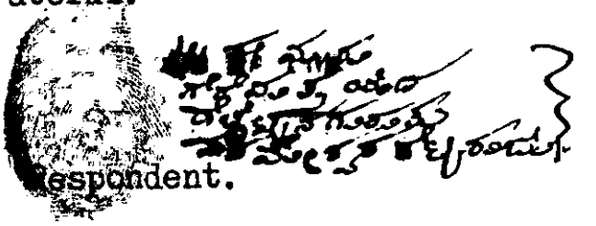
11. The allegation in para 11 of the appeal memo that the two shops have been separately let, is not correct. On a reading of Ex.R1, it will be clear that both the shops are included in the lease and no question of separate tenancy arises. There are no other grounds of attack taken to the orders of the lower court.

12. The Respondent most humbly submits that the above representations may be taken into consideration and in view of the fact no hardship or injustice

has in any way resulted to the appellant and that the two officers have not violated the procedure or misappreciated the evidence nor the law involved the above appeal may be ordered to be dismissed.

For which act of kindness, as in duty bound, respondent will ever remain grateful.

Mangalore,
10th July 1946.



Respondent.

Development Dept.

RENT - Madras Non-Residential Building Rent Control Order - Eviction of tenant -Order of the Collector of South Kanara- Revision petition -Orders passed.

Read: Petition from Maire Hengsu, Mangalore d/- ~~nil.~~ May 1946.

~~Read also:~~ From the Collector of South Kanara No. 5103-46-A.1 dated 12.6.1946.

From ~~the~~ Sri Parameshwara Shetty, Mangalore dated 10.7.1946.

ORDER MS.No. 2863 dated 26/7/46

This is a petition for the revision of the Order of the Collector of South Kanara in his D.Dis.No. 2508/46 dated 11.3.1946. The petitioner is the owner of two shops in Mangalore which have been let to Sri Parameshwara Shetty. He applied~~x~~ to the Rent Con-troller, Mangalore for the eviction of the tenant on the grounds that the tenant did not pay the rent due, that he was not willing to pay the increased rate of rent demanded and that he had sub-let one of the shops without her consent. The Rent Controller, in his order R.C.O.P. No.196/45 dated 21.1.1946 held that, ~~the question~~ as it was not an easy matter to give a finding in the case as to whether the rent was in arrears, the question regarding arrears is one for decision by a Civil Court but directed the eviction of the tenant on the ground that he had sub-let one of the shops in question. On the appeal preferred by the tenant, the Collector of South Kanara, in his order D.Dis.No.2508/46 dated 11.3.1946, held that under the provisions of the Madras Non-Residential Building Rent Control Order, tenant could be evicted only if he had sub-let the entire premises and accordingly set aside the order of the Rent Controller. The petitioner has now in her petition cited requested that the order of the Collector may be set aside by the Govt. on the grounds that the Collector should not have reversed the order of ~~eviction~~ eviction passed by the Rent Controller solely on the ground that the entire premises were not sub-let and that he should

Amps (-)

para 7, pp 5-6 (C)

pp 1-2 Cf (N)

pp 11-12 Cf (N)

have given a decision on all the points raised by the petitioner before the Rent Controller. The respon-dent(tenant), who was given an opportunity to make any representation he might wish to make, has submitted his representation also.

2. The Govt.have examined the petition along with the records connected with the case and the representation made by the tenant. They agree with the decision of the Collector that there was no sub-letting of the entire premises and that the tenant cannot be evicted from the shops on this ground. They however consider that both the Rent Controller and the Collector should have given a finding on the question of arrears of rent also. The Rent Controller has observed in his order dated 21.1.1946 that he could not fix fair rent unless he was moved under clause 5 of the Madras Non-Residential Building Rent Control Order, and that, as various questions were mixed up with this case, it was for a civil Court to decide the question regarding arrears of rent. It is observed from the records that both the shops were originally let out on a monthly rent of Rs.15/- p.m. Subsequently, the owner demanded rent at an enhanced rate which was refused by the tenant. At the time of the enquiry on the application of the owner for the eviction of the tenant, the Rent Controller should have considered whether the rent demanded by the owner was excessive and if so, what should be the fair rent for the house and then decided the question regarding the eviction of the tenant. The finding of the Rent Controller that he could fix fair rent only if he was moved under clause 5 of the Rent Control Order is not correct. Further under clause 8(2)(i) of the Order, in disposing of an application for the evition of a tenant for non-payment of rent , the Controllers should not refer the parties in such cases to a Civil Court but should hold an enquiry and dispose of the case summarily on the evidence avail-

mp 5g (C)

available. The finding of the Rent Controller that the question regarding arrears of rent in this case is one for decision by a Civil Court is not also correct. The

p 4g (U)

Govt. therefore, under sub-clause (2A) of ~~the~~ clause 9 of the Madras Non-Residential Building Rent Control Order, set aside the orders of the Rent Controller and the Collector referred to ~~in~~ in paragraph 1 above and direct that the Rent Controller, Mangalore, should hear the case afresh.

Dept. Wireless 29/7/86 24.746

25-7MB

The Collector of S.Kanara
(N) (with records in orgl.- Receipt to be ackd.)
Maire Hengsu,
C/o Srimathi ~~Akkamma~~
Akkamma, Hampankatta,
Mangalore
i Parameshwara Shetty,
Hampankatta, MANGALORE.

Development (N) Dept.

RENT - Madras Non-Residential Building Rent Control Order - Eviction of tenant - Order of the Collector of South Kanara - Revision.

Petition from Maire Hengsu, dated nil.
From the Collector of S.Kanara C.No.5103-46.A.1 dated 12.6.46.
From Sri Parameswara Shetty dated 10.7.1946.

To A.S.

The petitioner, Maire Hengsu, is the owner of two shops in Mangalore which have been let to one Parameshwara Shetty. In 1939, a lease deed was executed regarding the tenancy and the period of lease expired by the 1st September 1943. After the expiry of the lease, there was a dispute between the petitioner and the tenant regarding the tenancy, the tenant claiming extension of lease agreement for a further period of five years in pursuance of an alleged oral agreement and the petitioner denying any such oral agreement. In the meantime, the petitioner preferred an application to the Rent Controller, Mangalore, for the eviction of the tenant on the grounds that the rent due for the shops had not been paid and that the premises had been sub-let without her consent. The application was contended by the tenant on the grounds that rent was not in arrears, that the petitioner's demand for rent at an enhanced rate could not be complied with unless fair rent was fixed, and that the entire premises had not been sub-let. The Rent Controller in his order dated the 21st January 1946, held that the agreed rate of rent was only Rs.15/- and not Rs.24/- as demanded by the petitioner, and that, as it was not an easy matter to give a finding in the case as to whether rent was in arrears, it was for a Civil Court to resolve the tangle. He however observed that the action of the tenant in sub-letting one of the shops amounted to a contravention of the provisions of the Rent Control Order and directed him to put the owner in possession of the property. The tenant preferred an appeal to the Collector of South Kanara against the order of the Rent Controller. The Collector held that under the provisions of the Madras Non-Residential Building Rent Control Order a tenant could be evicted only if he had sub-let the

entire premises and that, as only one of the two shops in question had been sub-let, the order of eviction would not be valid. In his order dated 11.3.1946, he accordingly set aside the order of the Rent Controller. The petitioner has not made a representation to the Government for the revision of the Order of the Collector. The respondent, who was given an opportunity to make any representation he might wish to make on the petition, has submitted his representation also.

2. The petitioner represents that the Collector should not have reversed the Order of eviction ~~basing on the finding regarding sub-letting~~ solely on the ground that the entire premises were not sub-let and that he should have given a decision on all points. The Collector reports that though the petitioner could not file an appeal against the order of the Controller which was in her favour, she could have urged the points in her favour before the Collector at the time of hearing of the appeal of the respondent. The grounds adduced by the petitioner for the revision of the order of the Collector are the following:-

(i) The two shops were let separately and the tenant, having sub-let one of the shops, should have been ordered to vacate the shop so sub-let;

(ii) The shops were taken on lease for trade in beaten rice and they should not have been used for any other purpose;

(iii) The tenant was unwilling to pay the fair rent at Rs.24/- p.m; and

(iv) The tenant had fallen into arrears of rent to the extent of Rs.1700/-.

ITEM (1)

It is seen from the report of the Collector that, according to the original lease deed, both the shops were rented together at Rs.15/- per mensem. It cannot therefore be held that the two shops were leased separately so that each one of them could constitute a 'non-residential building' for the purpose of Clause 2(2) of the Control Order. The contention of the petitioner does not therefore seem valid.

The Collector reports that in the original lease deed there was no condition that the shops were let out for purposes of preparing and selling beaten rice and that they shoul not be used for any other purpose. Submitted that as the petitioner had not produced any evidence to prove that the tenant had used the shop for a purpose other than that for which it w was leased, this contention is not also valid.

ITEM (iii)

M' on pp 4-5 of (C) p 2 of (V)

The Rent Controller has observed in his order that he could not fix fair rent unless he was moved under ~~section 5~~ clause 5 of the Order and that in the present case the rent agreed to between the parties was Rs.15/- p.m. and not Rs.24/-. The Controller had based his finding regarding the agreed rent on the lease deed entered in 1939. The period of lease ~~entered~~ agreed in 1939 had expired by the 1st September 1943. No fresh agreement was entered into afterwards. The petitioner had therefore a right to demand an increase in the rent after the 1st Septr. 1943. If the tenant felt aggrieved it was open to him to apply to the Rent Controller for the fixation of fair rent. As no fair rent had been fixed by the Controller the rent demanded by the petitioner was lawful and the tenant was bound to pay it.

and 5 on pp 4-5 of (C) Y on p 36 of (C)

If however the tenant refused to pay the rent demanded, the owner can apply for the eviction of the tenant on the ground that the tenant was not willing to pay the fair rent. During the hearing on the application it would be competent for Controller to decide whether the rent charged was excessive, if so, to fix the fair rent and then decide the question of eviction. In the circumstances, the finding of the Controller that he could fix the fair rent only if he was moved by the tenant under clause 5 of the Order does not seem to be correct.

8 (2) (ii) p 3 of (V)

R

M' on pp 4-5 of (C) by

ITEM (iv).

The petitioner had contended before the Rent Controller that the tenant had not paid any rent since 1939. The tenant

e para 6 on p 5 of (C)

contended that he had paid Rs.810/- on 14.2.1939 as advance for 4½ years' rent, that the previous owner owed him a sum of Rs.204-13-0 and that a sum of Rs.25/- had been paid to the municipality towards tax. The Rent Controller however observed that as various questions were mixed up with the case, it was for a Civil Court to resolve the tangle and give a decision. He had accordingly held that the fact of arrears of rent had not been established. Submitted that in ~~deciding~~ Memo No 5189 IV/45-9 dated 21-2-46, instructions have been issued that in disposing an application for eviction of tenant ~~due to~~ for non-payment of rent, the Controllers ~~have been instructed not to refer~~ should not refer the parties in such cases to a Civil Court but should hold an enquiry and dispose of the case summarily on the evidence available. In the present case it seems that the Rent Controller should have given a finding on the question of arrears after considering what part of the several payments alleged to have been made by the tenant could be set off against the rent and directed the eviction of the tenant if he had defaulted in the payment of rent.

The respondent has now represented that he has made proper defence regarding the arrears of rent in the suit pending in the Court of District Munsif, Mangalore. The petitioner has presumably filed a suit for the arrears of rent due to her. But this fact does not seem to bar the Rent Controller from giving an order of eviction under the provisions of the Rent Control Order.

In ~~view of the position~~ the circumstances stated above, submitted for orders whether the decision of the Rent Controller and the Collector will be set aside and the Rent Controller asked to hear the case afresh.

3 Legal may perhaps see with reference to items (iii) and (iv) in para 2 above.

15/4/46 ✓

15-7-46.

Legal need not be referred
Order of the R.M. be set aside
Case be reheard

A.S

A draft order is submitted for approval

Neither the Rent Controller's nor the Collector's decision seems to be supported by strong grounds